

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

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BRYAN TOONE and JOLYNNE TOONE

Plaintiffs,

vs.

WELLS FARGO BANK, N.A.; PREMIER  
MORTGAGE CORPORATION OF  
AMERICA; ACCUBANK MORTGAGE  
CORPORATION DBA ACCUMORTGAGE  
CORPORATION; NORWEST  
MORTGAGE, INC.; LASALLE BANK  
N.A., as Trustee; BANK OF AMERICA, NA;  
ETITLE INSURANCE AGENCY;  
LUNDBERG & ASSOCIATES; KENT W.  
PLOTT; MARK S. MIDDLEMAS; DOES 1-  
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Defendants.

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MEMORANDUM DECISION AND  
ORDER DENYING MOTION FOR  
LEAVE TO FILE AMENDED  
COMPLAINT AND TO  
RECONSIDER DECISION

Case No. 2:11-CV-170

This matter is before the Court on Plaintiffs' Motion for Leave to File Amended  
Complaint and to Reconsider Decision.<sup>1</sup>

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<sup>1</sup>Docket No. 40.

Plaintiffs' Motion was filed within 28 days of the final judgment as to this matter entered by this Court. "[A] motion to reconsider filed within [28] days after entry of judgment is considered a Fed.R.Civ.P. 59(e) motion."<sup>2</sup> The Tenth Circuit has recognized the following grounds as warranting a motion to reconsider under Rule 59(e): "(1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice."<sup>3</sup> "Thus, a motion for reconsideration is appropriate where the court has misapprehended the facts, a party's position, or the controlling law. . . . It is not appropriate to revisit issues already addressed or advance arguments that could have been raised in prior briefing."<sup>4</sup> Because Plaintiffs have not alleged any grounds adequate for this Court to reconsider the judgment under Rule 59(e), the Court will deny this request.

As to Plaintiffs' request for leave to amend their complaint, it is well established that "[a]fter a district court enters a final judgment . . . it may not entertain motions for leave to amend unless the court first sets aside or vacates the judgment pursuant to Fed.R.Civ.P. 59(e) or 60(b)."<sup>5</sup> Accordingly, the Court will also deny Plaintiff's request to file an amended complaint. It is therefore

ORDERED that Plaintiffs' Motion for Leave to File an Amended Complaint and to Reconsider Decision (Docket No. 40) is DENIED.

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<sup>2</sup>*Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2005) (second alteration to reflect change in Rule 59).

<sup>3</sup>*Id.* (citing *Brumark Corp. v. Samson Res. Corp.*, 57 F.3d 941, 948 (10th Cir. 1995)).

<sup>4</sup>*Id.*

<sup>5</sup>*Combs v. PriceWaterhouse Coopers LLP*, 382 F.3d 1196, 1205 (10th Cir. 2004).

DATED December 13, 2011.

BY THE COURT:



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TED STEWART  
United States District Judge